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VIA ECFS

EX PARTE

September 9, 2013

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: *WC Docket No. 10-90, Connect America Fund; WC Docket No. 05-337, High-Cost Universal Service Support*

Dear Ms. Dortch:

On September 9, 2013, the undersigned, from Windstream Corporation (hereinafter “Windstream”), spoke with Randy Clarke, Deena Shetler, and Doug Slotten of the Wireline Competition Bureau regarding Section 54.313(d) of the Commission’s rules, which requires that beginning this year, price cap carriers receiving intercarrier compensation replacement Connect America Fund (CAF ICC) support must certify that such support has been used to build and operate broadband-capable networks in areas substantially unserved by an unsubsidized competitor.¹

Consistent with a January 31, 2013 filing by the United States Telecom Association (USTelecom),² Windstream respectfully requested that the Commission promptly clarify that, to fulfill the Section 54.313(d) requirements, carriers may certify on a holding company level, rather than a study area level. Speedy action on this matter is necessary because carriers are required to submit their 2012 certifications on October 15, 2013, and because carriers’ 2013 spending requirements are currently in effect and must be fulfilled by December 31, 2013.

Windstream noted that Section 54.313(d) does not specify that carriers must certify that this support is being spent in the same study areas in which it is granted; nevertheless, if the Commission deems that a study area-level certification is required, it would be impossible for

¹ See 47 C.F.R. § 54.313(d).

² See Letter from David Cohen, United States Telecom Association, to Marlene H. Dortch, Secretary, FCC, in WC Docket No. 10-90, filed Jan. 31, 2013, at 2-3 (USTelecom Letter).

Windstream to so certify in certain study areas due to the purported presence of unsubsidized competitors who provide broadband according to the National Broadband Map.

In particular, if a study area-level certification is required for CAF ICC support, Windstream would have to return \$182,000 in 2012 support for rural areas in southwestern New Mexico—support that has already been spent on broadband-capable networks—because large swaths of Windstream’s service area in New Mexico are purportedly served by unsubsidized competitors according to the National Broadband Map. For 2013 and beyond, such a certification requirement would result in Windstream having to forego a substantial amount of CAF ICC support that otherwise would go directly toward building and supporting broadband networks in its service area.

Windstream further noted that such a clarification would be consistent with price cap carriers’ requests for clarification that they are permitted make their Section 54.313(c) certifications on a study area level.³ Section 54.313(c) requires price cap recipients of frozen high-cost support to certify annually, beginning on July 1, 2014, that a percentage of the frozen high-cost support received in the previous year was used to build and operate broadband-capable networks used to offer the provider’s own retail broadband service in areas substantially unserved by an unsubsidized competitor according to the National Broadband Map. That percentage grows from one-third in 2013, to two-thirds in 2014, and 100 percent in 2015. As USTelecom and other price cap carriers have explained, a requirement that carriers make this certification on a study area level would lead to many carriers having to forego frozen support—and the broadband investment that it would underwrite—because certain study areas are purportedly largely or completely served by unsubsidized competitors.⁴

For Windstream, as we noted in a February 5, 2013 ex parte letter, the combined effect of requiring a study area-level certification for both 2013 frozen high-cost support and 2013 CAF ICC support would be the relinquishment of \$919,000 in funding.⁵ The impact is likely to be greater in 2014 because the frozen support spending requirement will increase and Windstream expects to receive more in CAF ICC support.⁶

An interpretation of the rules that would result in carriers being unable to spend high-cost support is contrary to the Commission’s goal of expanding universal voice and broadband availability. Therefore, Windstream respectfully requests that the Commission promptly clarify

³ See, e.g., USTelecom Letter; Letter from Jonathan Banks, United States Telecom Association, to Marlene Dortch, Secretary, FCC, WC Docket No. 10-90, CC Docket No. 01-92, filed February 27, 2013 (providing notice of ex parte presentation to the Bureau on the issue).

⁴ See, e.g., USTelecom Letter; Letter from Karen Brinkmann, Counsel to FairPoint Communications, Inc., to Marlene Dortch, Secretary, FCC, WC Docket Nos. 10-90 and 05-337, filed August 14, 2013, at 2.

⁵ See Letter from Malena F. Barzilai, Senior Counsel, Government Affairs, Windstream, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, filed February 5, 2013.

⁶ Future impacts cannot be quantified because the state of CAF Phase II implementation and data from the updated National Broadband Map(s) are unknown.

that to fulfill the requirements set forth in Section 54.313(d) and (c) of the Commission's rules, price cap carriers may certify on a holding company level that the applicable amounts of CAF ICC support and frozen high-cost support, respectively, are being used to build and operate broadband networks in areas substantially unserved by an unsubsidized competitor.

Please feel free contact me if you have any questions.

Sincerely yours,

/s/ Malena F. Barzilai

Malena F. Barzilai

cc: Carol Matthey
Randy Clarke
Deena Shetler
Doug Slotten